

## 4.2 Supervising Europol

Europol is the EU body responsible for supporting the law enforcement authorities of the Member States in the fight against serious international crime and terrorism. On 1 May 2017, the new [Europol Regulation](#) came into force tasking the EDPS, as the EU's independent data protection authority, with responsibility for supervising the processing of personal data relating to the operational activities carried out by Europol. The processing of personal data relating to Europol's administrative activities, including personal data relating to Europol staff, is also under EDPS supervision, but is subject to the rules outlined in [Regulation 45/2001](#).

The EDPS takes over this supervisory role from the Joint Supervisory Body (JSB), composed of representatives from the Member States, which had been responsible for supervising data processing at Europol since 1995.

The new Regulation brings Europol supervision fully in line with the requirements of the [EU Charter of Fundamental Rights](#). The EDPS acts as an independent supervisory authority with full-fledged enforcement powers, whose decisions can be challenged before the European Court of Justice. Europol is amongst the first of the EU bodies operating in the Area of Freedom, Security and Justice to be placed under EDPS supervision for data protection matters. We will also act as the supervisor for the new European Public Prosecutor's Office. There is also a proposal for the EDPS to be appointed as the supervisor for Eurojust. Supervision of EU institutions, bodies, agencies and information systems in the so-called Area of Freedom, Security and Justice is therefore set to become a core activity for the EDPS.

To help us in our work on Europol supervision, we cooperate closely with national supervisory authorities through a Cooperation Board, an advisory body for which the EDPS also provides the Secretariat. This Board meets regularly to facilitate cooperation between the EDPS and national supervisory authorities on issues requiring national involvement.

A parliamentary supervisory body, the Joint Parliamentary Scrutiny Group (JPSG), made up of more than 120 representatives from the European Parliament and national Parliaments, has been set up to hold Europol accountable for its activities. We are required to support the JPSG in its tasks.

One of our key challenges in our new role is to ensure that Europol strikes the right balance between security and privacy when dealing with data processing for the purpose of law enforcement. We firmly believe that the idea of a secure and open Europe can only become a reality if we are able to ensure both enhanced operational effectiveness in the fight against cross-border crime and the fundamental rights and freedoms of individuals.

### 4.2.1 Getting to know Europol

In anticipation of our new role at Europol, an internal EDPS task force was set up in 2016, dedicated to preparing for this role. The task force continued its preparatory activities up until the new Regulation became applicable on 1 May 2017. EDPS staff have followed internal and external training sessions related to Europol supervision, and we have established and maintained regular

contact with Europol's Data Protection Function team (DPF), to foster mutual understanding and establish effective communication channels.

On 15-16 May 2017, we organised an operational visit to Europol's premises. This visit helped us to familiarise ourselves with Europol's practices and procedures. We were given full access to Europol premises as well as on-the-spot demonstrations of Europol's data processing activities. We were also given technical presentations, which provided us with an overview of Europol's systems and the layout of their networks.

To ensure we were up to date with the most recent developments in Europol supervision, we also requested an overview of the main recommendations given to Europol by the JSB after their most recent inspections, as well as an update on what Europol had done to address these recommendations.

#### **4.2.2 Keeping in contact with Europol's data protection team**

In line with the requirements outlined in the Regulation, Europol has appointed a [Data Protection Officer](#) (DPO), who must act independently in the performance of his duties. In order to monitor Europol's compliance with the Regulation, we work closely with Europol's DPO and the DPF team and regularly provide informal advice to the DPF team.

To reinforce this cooperation and ensure it works smoothly, we meet with the DPF and other relevant operational staff on a regular basis. These meetings are an opportunity to discuss with the DPF and relevant operational staff members any new projects and data processing procedures planned by Europol, as well as other pending issues.

In 2017, we held two meetings with the DPF. These took place in The Hague, on 10 July 2017 and 25 September 2017. We also met the DPF and other Europol's staff members in Brussels on 6 and 7 November 2017. So far, these meetings have proved a valuable tool, helping us to anticipate consultations on data processing and to define and plan for future activities, such as inspections or inquiries. Our next meeting is planned for February 2018.

#### **4.2.3 Keeping up to date with new analysis projects**

In accordance with the Europol Regulation, Europol can process personal data for operational analysis, that is, to support criminal investigations and criminal intelligence operations carried out by law enforcement authorities in the Member States, but only in the context of *operational analysis projects*.

Each operational analysis project focuses on a specific crime area, such as child pornography, cybercrime, drug trafficking, organised criminal groups, property crimes or terrorism. For each project, Europol must define the specific purpose, the categories of data and the individuals involved, the participants (Member States, non-EU countries, international organisations), how long the data will be stored and the conditions for access and any proposed transfer or use of the data concerned. The EDPS must also be informed of this.

Europol informed the EDPS about its portfolio of 28 existing operational analysis projects on 1 May 2017 and about amendments to the portfolio, as required by the Europol Regulation. In 2017, we were consulted informally about two new analysis projects prior to their actual creation.

#### 4.2.4 Giving our opinion on Guidelines

As the supervisory authority for Europol, we are responsible for providing them with advice on all matters concerning the processing of personal data. This includes proposals for internal rules or administrative measures relating to the protection of the fundamental rights of individuals or the transfer and exchange of personal data. We issue our recommendations in the form of an Opinion. On 6 July 2017, we published our first Europol [Opinion](#), which concerned Europol's Integrated Data Management Concept (IDMC) Guidelines.

The IDMC Guidelines were provisionally adopted by Europol on 1 May 2017, pending EDPS approval. They specify:

- the conditions under which personal data might be temporarily processed in order to determine whether it is relevant to Europol's tasks;
- the procedures for processing personal information;
- the requirements for processing personal information for cross-checking, strategic or thematic analysis, operational analysis or for facilitating the exchange of information.

The guidelines therefore provide the procedures according to which Europol must carry out all future processing of personal data under the Europol Regulation.

In our Opinion, we made 16 recommendations. Our main concern was the need to further clarify the different purposes for which Europol can process the same data in the same database, for example, simultaneously processing data for operational and for strategic analysis. This issue is important because different data protection safeguards apply depending on the purpose for which data is processed. In the case of Europol, this refers to the type of intelligence service or product Europol plans to deliver to the national law enforcement authorities concerned.

Europol promptly implemented the recommendations made by the EDPS in the revised version of the IDMC Guidelines, which were adopted by Europol's Management Board on 13 December 2017. Europol has also promised to work on clearly defining and streamlining procedures and their respective data protection safeguards, such as data retention periods, for each type of analysis product or service they provide.

#### 4.2.5 Inspecting Europol

From 12-15 December 2017, we carried out our first inspection of Europol. Taking advantage of the opportunity provided in the Europol Regulation, we conducted a joint inspection alongside an expert from the Italian [data protection authority](#) (DPA) that participated in the last JSB inspections. This allowed us to ensure continuity with the JSB's supervision activities.

This first inspection aimed to check on the implementation of pending recommendations formulated by the JSB, as well as to assess the overall level of compliance of Europol with the new legal framework.

Europol's Regulation requires the organisation to implement a new approach to data protection, based on regulating data uses, such as cross-checking and strategic, thematic and operational analysis. We therefore paid particular attention to the processes and tools used to process personal data and to produce intelligence products and services.

The legal part of our inspection focused on Europol's data lifecycle. First, we looked into the data intake process at Europol's Front Office, where all incoming information is subject to a legality check and directed to the relevant operational analysis project. We then examined the processing activities conducted in the criminal areas of migrant smuggling and heroin trafficking, and scrutinised the data review process. Finally, in order to assess compliance with the processing of administrative data under Regulation 45/2001, we also inspected Europol's internal auditing system, as tool used to monitor the activities of Europol staff.

The technical part of the inspection focused on three items: an audit of the Information Security Management Programme applied by Europol; an assessment of the time limits set for the storage and erasure of personal data under the Europol Regulation and, more specifically, the existing technical rules applied in all automated systems that process operational data; and an audit of the logs Europol must maintain for all personal data processing activities under the Europol Regulation.

Throughout the inspection, we were able to rely on the collaboration of Europol's DPF team and the Europol staff involved. The results of our inspection and our recommendations will be communicated to Europol in due course.

#### **4.2.6 Carrying out prior consultations**

Prior consultations are required whenever a new type of data processing activity planned by Europol involves the processing of sensitive data or might present a specific risk to individuals. Based on the facts submitted by Europol, the EDPS is required to examine the proposed processing operation in relation to the data protection safeguards laid down in the Europol Regulation and all other relevant data protection principles and rules. We then provide them with recommendations that need to be implemented in order to ensure compliance.

In 2017, we received three prior consultations. We will provide Europol with the relevant feedback in 2018.

#### **4.2.7 Dealing with complaints**

Another of our supervisory responsibilities is to hear and investigate complaints from individuals who believe that Europol has mishandled their personal data. We investigate all admissible complaints, in consultation with the relevant national supervisory authorities in the Member States, and adopt a decision.

In 2017, we received only two complaints. One was deemed inadmissible, as it related to a request for access to data that Europol, at the time of receiving the complaint, had not taken a decision on.

The other complaint was considered admissible and was still under investigation at the end of 2017. It relates to a claim that Europol did not provide access to personal data when requested to do so by the individual concerned.

#### **4.2.8 Meeting with the Cooperation Board**

Europol's work requires close collaboration with relevant national authorities in the Member States. While it is the task of the EDPS to supervise the processing of personal data by Europol, it is the task of each national DPA to oversee the processing of personal data by their respective national law enforcement authorities. To perform our supervisory duties at Europol it is therefore essential that we are able to cooperate effectively with the national DPAs.

To help us with this, the Europol Regulation provides for the establishment of a Cooperation Board, for which the EDPS provides the Secretariat. The Board has an advisory function and provides a forum to discuss common issues as well as to develop guidelines and best practices.

The Board meets at least twice a year and is composed of representatives from the relevant national DPAs and the EDPS. In 2017, these meetings took place on 14 June 2017 and 16 November 2017. At the June meeting, the Board adopted its rules of procedure and elected a Chair and Vice-Chair.

#### **4.2.9 Ensuring sound cooperation at management level**

On 3 October 2017, EDPS Giovanni Buttarelli visited Europol to share his views on our supervisory role with the Europol Management Board.

In his speech, he echoed the EDPS Strategy by referring to the importance of moving to a data protection approach based on accountability, specifically the ability of Europol as organisation to proactively and internally ensure and demonstrate compliance with the principles and rules for the protection of personal data. He also emphasised the importance of a risk-based approach to data protection, stressing that this involves effective documentation of data processing activities as well as the use of risk assessments, [Data Protection Impact Assessments](#) (DPIAs) and requests for consultations from the EDPS where necessary.

Mr. Buttarelli also highlighted the importance of effective cooperation with national DPAs, whose work is inextricably linked with the work of the national law enforcement authorities who cooperate with Europol. He made specific reference to the importance of joint inspections, the first of which took place in December 2017.

Lastly, the EDPS called for a creative approach to applying the new legal framework. Though the EDPS has extensive experience working as a supervisory authority for the EU institutions, we recognise that the task of supervising Europol holds its own unique challenges. This is because of the impact of Europol's processing operations on citizens.

## 4.2.10 The Joint Parliamentary Scrutiny Group (JPSG)

As part of its role, the JPSG requests, at least once a year, a meeting with the EDPS to discuss Europol's compliance with the rules and principles relating to the protection of personal data.

The first meeting of this group took place on 9 October 2017. EDPS Giovanni Buttarelli was requested to appear at the meeting to discuss the protection of personal data with regard to Europol's activities.

In his [speech](#), the EDPS provided an outline of our activities since taking over responsibility for Europol supervision on 1 May 2017, as well as explaining our approach to Europol supervision, based on the accountability principle. He also replied to all questions from the representatives from the European Parliament and national Parliaments.

## 4.2.11 Statistics (Article 43(5) of the Europol Regulation)

**Statistics** (as requested by Article 43(5) of the Europol Regulation)

- Complaints: 2
- Inquiries and investigations: 1 operational visit; 1 inspection; 4 inquiries
- Transfers to third countries and international organisations: N/A
- Prior consultations: 3
- Use of powers laid down in Article 43(3) of the Europol Regulation: N/A